IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1052 OF 2006

Mahesh Baba @ Shivram Aavchar ....Applicant.

V/s

The State of Maharashtra
(at the instance of Daund
Police, Tal. Daund, Dist. Pune) ....Respondent.

Mr. Mahesh Pahane for the applicant.
Ms. S.D. Shinde, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 20th March, 2006

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant was arrested in connection with C.R. No.177 of 2005 registered at Daund Police Station for the offence punishable under sections 307, 323, 504 read with section 34 of the Indian Penal Code.

3. It is alleged that the applicant and others assaulted the deceased with wooden log on his head and the other parts of his body. The deceased was taken to the house and on the next day he was admitted in the hospital. The victim died one and half month after he was admitted in the hospital. The doctor who

performed the post-mortem has stated that the cause of death was due to head injury.

4. In the present case, charge-sheet has been filed. It is no doubt true that the eye witnesses have stated that the present applicants had assaulted the deceased. However, the fact remains that the complaint was filed after a lapse of two days and the deceased was admitted to the hospital on the next day and he died after one and half month. From the complaint, prima facie, it appears that the applicant and others were assaulting the deceased because he had stolen certain instrument from their compound and that the deceased was habitual alcoholic.

5. Since the charge-sheet has been filed and since the deceased died after one and half month there is every possibility that after the evidence is recorded by the trial court, the case may not fall under the provisions of section 302 but may fall under the provisions of section 304 Part-I and Part-II of the Indian Penal Code. In this view of the matter the applicant be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount. The applicant shall report to Daund Police Station once in a month.

6. It is made clear that the applicant shall not tamper with the evidence or threaten any of the witnesses. If he tampers with the evidence or if any complaint is filed by any of the witnesses against the applicant, liberty is granted to the Public Prosecutor to apply for cancellation of the bail.

7. Application is accordingly disposed of.

V.M. KANADE, J.